

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

PLAINTIFF,

V.

DART CONTAINER CORPORATION
OF PENNSYLVANIA,
PENGUIN INDUSTRIES, INC., AND
REEVES BROTHERS, INC.,

DEFENDANTS.

CIVIL ACTION NO. 04-2208

CONSENT DECREE

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DART CONTAINER CORPORATION
OF PENNSYLVANIA,
PENGUIN INDUSTRIES, INC. AND
REEVES, BROTHERS, INC.,

Defendants.

Civil Action No.

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607, seeking recovery of response costs incurred and to be incurred in responding to the release or threat of release of hazardous substances at or in connection with the Walsh Landfill (a/k/a the Welsh Road and Barkman Landfill) Superfund Site in Honey Brook Township, Chester and Lancaster Counties, Pennsylvania ("Site").

B. As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future. In performing these response actions, EPA has incurred and will continue to incur response costs at or in connection with the Site.

1. On February 22, 1985, EPA issued a Unilateral Administrative Order ("1985 UAO") to Ernest and Grace Barkman ("the Barkmans") requiring them to characterize, stage, and sample twenty-six (26) drums found on the Site; to sample visually contaminated soils in the drum staging area; to sample a seep located on the eastern perimeter of the landfill located at the Site; and to sample eight (8) residential wells in the vicinity of the Site. The Barkmans did not fully comply with the 1985 UAO, causing EPA to incur costs to complete the sampling activity.

2. The Pennsylvania Department of Environmental Resources ("PADER") now known as the Pennsylvania Department of Environmental Protection ("PADEP") took the lead at the Site and performed a Remedial Investigation/Feasibility Study ("RI/FS") at the Site between 1985 and 1988. EPA issued a Record of Decision ("ROD") for Operable Unit 1 ("OU 1") of the Site on June 29, 1990. The ROD for OU 1 calls for the clearing of materials from the surface of the Site; design and construction of a landfill cap over the landfill area to address the source of contamination at the Site; the extension of the Honey Brook Borough water supply system to service nearby residences; institutional controls, including building a fence around the landfill area and deed restrictions; and performance of a focused ground water study to determine what further action is necessary for OU 2. At this time, EPA has completed the remedial activities required by the ROD for OU 1 except for capping the Site. The focused ground water study has been completed and a ROD for OU 2 will be issued shortly.

3. On March 21, 1991, EPA issued a Unilateral Administrative Order ("1991 UAO") to the Barkmans, Ern-Bark, Inc., Twin County Disposal Company, and E.B. Corp., Inc. pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), which directed the voluntary removal of vehicles, dumpsters, and other salvageable or reusable materials from the Site. On September 29, 1993, EPA issued an Amendment to the 1991 UAO, mandating that certain materials be cleared from the Site and that the Site be vacated by November 28, 1993. The Barkmans failed to comply with the 1991 UAO or the Amendment thereto.

4. On September 20, 1996, the United States, on behalf of EPA, filed a complaint against Ernest Barkman, Grace Barkman, Ern-Bark, Inc., Bark-Ern, Inc., and E.B. Corp., Inc. (the "Owner/Operator Defendants") in the United States District Court for the Eastern District of Pennsylvania, pursuant to Sections 106, 107, and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613. The United States in its complaint sought, inter alia: (1) reimbursement of costs incurred by EPA and the United States Department of Justice for response actions at the Site, together with accrued interest; (2) a declaratory judgment against the Owner/Operator Defendants for liability for future response costs; (3) penalties against the Owner/Operator Defendants for violations of the 1991 UAO and Amendment; and (4) performance of remedial action by the Owner/Operator Defendants consistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300; and (5) such other relief as the court found appropriate.

5. In March 1998, the Commonwealth of Pennsylvania (the "Commonwealth") on behalf of the Pennsylvania Department of Environmental Protection ("PADEP") filed a complaint in the United States District Court for the Eastern District of Pennsylvania, against the Owner/Operator Defendants, alleging that they were liable to the Commonwealth under Section 107 of CERCLA, 42 U.S.C. § 9607, and Sections 507, 701, and 1101, of the Pennsylvania Hazardous Sites Cleanup Act ("HSCA"), 35 P.S. §§ 6020.507, 6020.701, and 6020.1101. The Commonwealth's case was consolidated with EPA's action on May 11, 1998.

6. On May 21, 1998, the United States filed a Motion for Summary Judgment and

Enforcement of EPA's 1991 UAO and Amendment. On September 11, 1998, the Commonwealth filed a Motion for Summary Judgment for recovery of past and future response costs incurred by the Commonwealth in connection with the Site. On December 17, 1998, the Court granted the United States' and Commonwealth's Motions ("1998 Judgment"). The 1998 Judgment provided, among other things, that the Barkmans must comply with the 1991 UAO and Amendment immediately, under penalty of contempt, and that they were liable for past and future response costs in connection with the Site.

7. On March 19, 1999, the Regional Administrator of EPA issued a Unilateral Administrative Order ("1999 UAO") to Ernest Barkman, Grace Barkman, Ern-Bark, Inc., Bark-Ern, Inc., E.B. Corp., Inc., Alcoa Inc. (f/k/a Aluminum Company of America), Dart Container Corporation of Pennsylvania, Ecolaire Incorporated, Fenchurch, Inc., Penguin Industries, Inc., Sun Company, Inc. (R&M), Unisys Corporation, Waste Management of Pennsylvania, Inc., and Waste Management Disposal Services of Pennsylvania, Inc. pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606. The 1999 UAO required implementation of the ROD for OU 1 at the Site.

8. On May 13, 1999, Alcoa Inc., Unisys Corporation, Waste Management of Pennsylvania, Inc., and Waste Management Disposal Services of Pennsylvania, Inc. ("the PRP Group") responded jointly to the 1999 UAO, proposing to undertake and fund the installation of the landfill cap at the Site. On July 15, 1999, the PRP Group submitted to EPA and PADEP an alternative response action proposal for the Site for consideration to serve as a basis for a ROD Amendment. In October 2000, the PRP Group submitted a Focused Feasibility Study ("FFS") to EPA and PADEP which presented alternatives to the remedy selected in the 1990 ROD for OU 1 of the Site, including one which utilizes an Evaporation/Transpiration ("ET") cover system. On March 12, 2001, and August 24, 2001, the PRP Group submitted additional information to EPA and PADEP in support of use of the ET cover system as an alternative capping remedy for OU 1 of the Site.

9. On August 27, 2002, EPA published notice of a proposed plan for revised remedial action for the capping component of the OU 1 remedy utilizing an ET cover system. EPA held a public meeting on the proposed plan on September 17, 2002, and provided an opportunity for written and oral comments from the public on the proposed plan. EPA's decision regarding the selection of the revised remedial action for capping the landfill at the Site was published in a ROD Amendment dated July 2, 2003.

C. The Regional Administrator of EPA, Region III, or his/her delegatee, has determined the following:

1. prompt settlement with each Settling Defendant is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1);
2. the payment to be made by each Settling Defendant under this Consent Decree involves only a minor portion of the response costs at the Site within the meaning of Section

122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1), based upon EPA's estimate that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by private parties is \$5,758,869; and

3. the amount of hazardous substances contributed to the Site by each Settling Defendant and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each Settling Defendant are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A). This is because the amount of hazardous substances contributed to the Site by each Settling Defendant does not exceed 3.5% of the hazardous substances at the Site, and the hazardous substances contributed by each Settling Defendant to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site. Charts identifying the volumes of liquid and solid wastes disposed at the Site (Liquid and Solid Waste Reports) are attached as Appendix A. A chart identifying the Settling Defendants' allocated share of Site costs is attached as Appendix B.

D. The Settling Defendants do not admit any liability to Plaintiff or any other person or entity arising out of the transactions or occurrences alleged in the complaint.

E. The United States and Settling Defendants agree that settlement without further litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving this action with respect to Settling Defendants.

THEREFORE, with the consent of the Parties to this Consent Decree, it is ORDERED, ADJUDGED, and DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 9613(b), and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status of a Settling Defendant, including but not limited to, any transfer of assets or real or personal property shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

IV. STATEMENT OF PURPOSE

3. By entering into this Consent Decree, the mutual objectives of the Parties are:

a. to reach a final settlement among the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), that allows Settling Defendants to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a number of potentially responsible parties from further involvement at the Site; and

c. to obtain settlement with Settling Defendants for their fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and by private parties, and to provide for full and complete contribution protection for Settling Defendants with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

V. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities.

e. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

f. "Interest" shall mean interest at the current rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

g. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

h. "Parties" shall mean the United States and the Settling Defendants.

i. "Response costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

j. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

k. "Settling Defendants" shall mean Dart Container Corporation of Pennsylvania, Penguin Industries, Inc., and Reeves Brothers, Inc. (successor in interest to Fenchurch, Inc.). For purposes of sections IX-XII, the term "Settling Defendants" includes Fenchurch, Inc. and each of its shareholders.

l. "Site" shall mean the Walsh Landfill (a/k/a Welsh Road and Barkman Landfill) Superfund Site, encompassing approximately eight (8) acres, located in Honey Brook Township, Chester and Lancaster Counties, Pennsylvania, and depicted more clearly on the map attached as Appendix C.

m. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

VI. PAYMENT

5. Within thirty (30) days of entry of this Consent Decree, Settling Defendants Dart Container Corporation of Pennsylvania and Penguin Industries, Inc. shall pay to the EPA Hazardous Substance Superfund the amount set forth in Appendix B to this Consent Decree. Within six (6) months of the date of entry of this Consent Decree, Settling Defendant Reeves Brothers, Inc. shall pay to the EPA Hazardous Substance Superfund the amount set forth in Appendix B to this Consent Decree.

6. Each Settling Defendant's payment includes an amount for: a) past response costs incurred at or in connection with the Site; b) projected future response costs to be incurred at or in connection with the Site; and c) a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any private party, will exceed the estimated total response costs upon which Settling Defendants' payments are based.

7. Each payment shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number 03-87, and DOJ Case

Number 90-11-2-612B and shall be sent to:

EPA Hazardous Substances Superfund
U.S. EPA, Region III Superfund Accounting
P.O. Box 360515
Pittsburgh, PA 15251-6515

The total amount paid by the Settling Defendants shall be deposited in the Walsh Landfill (a/k/a Welsh Road and Barkman Landfill) Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance the response action at or in connection with the Site. Any balance remaining in the Walsh Landfill (a/k/a Welsh Road and Barkman Landfill) Special Account after completion of the response actions shall be transferred by EPA to the EPA Hazardous Substance Superfund.

8. At the time of payment, each Settling Defendant shall send notice that such payment has been made to:

Chief, Environmental Enforcement Section
United States Department of Justice
DOJ No. 90-11-2-612B
P.O. Box 7611
Washington, D.C. 20044-7611

and

U.S. EPA, Region III
Docket Clerk (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

VII. FAILURE TO MAKE PAYMENT

9. If any Settling Defendant fails to make full payment within the time required by Section VI, that Settling Defendant shall pay Interest on the unpaid balance. In addition, if any Settling Defendant fails to make full payment as required by Section VI, the United States may, in addition to any other available remedies or sanctions, bring an action against that Settling Defendant seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(l) of CERCLA, 42 U.S.C. 9622(l), for failure to make timely payment.

VIII. CERTIFICATION OF SETTILING DEFENDANT

10. By signing this Consent Decree, each Settling Defendant certifies, individually, that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors, or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage, or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

IX. COVENANT NOT TO SUE BY UNITED STATES

11. In consideration of the payments that will be made by Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Section X (Reservations of Rights by United States), the United States covenants not to sue or take administrative action against any of the Settling Defendants pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect for each Settling Defendant upon receipt of that Settling Defendant's payment as required by Section VI of this Consent Decree. With respect to each Settling Defendant, individually, this covenant not to sue is conditioned upon: a) the satisfactory performance by Settling Defendant of all obligations under this Consent Decree; and b) the veracity of the information provided to EPA by Settling Defendant relating to Settling Defendant's involvement with the Site. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

X. RESERVATIONS OF RIGHTS BY UNITED STATES

12. The covenant not to sue by the United States set forth in Section IX does not pertain to any matters other than those expressly specified in Section IX. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters including, but not limited to, the following:

- a. liability for failure to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; or
- d. liability arising from the future arrangement for disposal or treatment of a

hazardous substance, pollutant, or contaminant at the Site after the date of lodging of this Consent Decree.

13. Notwithstanding any other provision in this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings against any individual Settling Defendant in this action or in a new action or to issue an administrative order to any individual Settling Defendant seeking to compel that Settling Defendant to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if information is discovered which indicates that such Settling Defendant contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such Settling Defendant no longer qualifies as a *de minimis* party at the Site because that Settling Defendant contributed greater than 4% of the hazardous substances at the Site, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site.

XI. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

14. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site or this Consent Decree including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response activities at the Site; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

15. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

16. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against each other with regard to the Site pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

17. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The United States and Settling Defendants each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with

respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

18. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue included in Section IX.

19. The Parties agree, and by entering this Consent Decree this Court finds, that each Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken and to be taken by the United States and by private parties, and all response costs incurred and to be incurred by the United States and by private parties, at or in connection with the Site.

XIII. RETENTION OF JURISDICTION

20. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XIV. INTEGRATION/APPENDICES

21. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached and incorporated into this Consent Decree:

"Appendix A" is the Liquid and Solid Waste Allocation Charts.

"Appendix B" is the Volumetric Ranking Summary/Cost Allocation Report.

"Appendix C" is a map of the Site.

XV. PUBLIC COMMENT

22. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. The United States shall file with the Court any written comments received and the United States' response thereto. The United States reserves the right to withdraw or withhold its consent if comments regarding the Consent Decree disclose

facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to entry of this Consent Decree without further notice, and the United States reserves the right to oppose an attempt by any person to intervene in this civil action.

XVI. EFFECTIVE DATE

23. The effective date of this Consent Decree shall be the date of entry by this Court, following public comment pursuant to Section XV.

XVII. SIGNATORIES/SERVICE

24. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, or his/her delegatee, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such party to this document.

25. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

26. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service including, but not limited to, service of a summons, in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court.

27. Contemporaneous with the filing of the complaint in this action, the United States shall file a stipulation or motion for an extension of time to answer the complaint in favor of each Settling Defendant, which extension shall run until thirty (30) days after the United States withdraws or withholds its consent pursuant to Section XV (Public Comment) or the Court declines to enter this Consent Decree.

SO ORDERED THIS DAY OF 2004

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Dart Container Corporation of Pennsylvania, et al. (E.D. Pa.), relating to the Walsh Landfill (a/k/a Welsh Road and Barkman Landfill) Superfund Site in Honey Brook Township, Chester and Lancaster Counties, Pennsylvania:


FOR THE UNITED STATES OF AMERICA

Thomas L. Sansonetti
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice

Date: 4/2/04

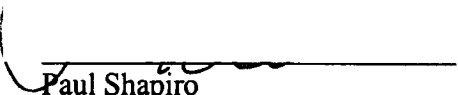
W. Benjamin Fisherow
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice

Date: 4/2/14


Bernice I. Corman
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

Patrick L. Meehan
United States Attorney
Eastern District of Pennsylvania

Date: 5-14-04


Paul Shapiro
Assistant United States Attorney
615 Chestnut Street
Philadelphia, Pennsylvania 19106-4476

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Dart Container Corporation of Pennsylvania, et al. (E.D. Pa.), relating to the Walsh Landfill (a/k/a Welsh Road and Barkman Landfill) Superfund Site in Honey Brook Township, Chester and Lancaster Counties, Pennsylvania:

Date: 4-2-04

Donald S. Welsh
Regional Administrator, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Date: 3/31/04

William C. Early
Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Date: 3-30-04

Cynthia J. Nadolski
Sr. Assistant Regional Counsel
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Dart Container Corporation of Pennsylvania, et al. (E.D. Pa.), relating to the Walsh Landfill (a/k/a Welsh Road and Barkman Landfill) Superfund Site in Honey Brook Township, Chester and Lancaster Counties, Pennsylvania:

FOR DEFENDANT DART CONTAINER
CORPORATION OF PENNSYLVANIA

Date: April 9, 2004

X
[Names and address of Defendant's
signatories]

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Christopher J. Dunsky, Esq.

Title: Attorney At Law, Honigman Miller Schwartz and Cohn, LLP

Address: 2290 First National Building
660 Woodward Avenue
Detroit, MI 48226-3583

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Dart Container Corporation of Pennsylvania, et al. (E.D. Pa.), relating to the Walsh Landfill (a/k/a Welsh Road and Barkman Landfill) Superfund Site in Honey Brook Township, Chester and Lancaster Counties, Pennsylvania:

FOR DEFENDANT PENGUIN INDUSTRIES,
INC. 116 QUARRY ROAD
COATESVILLE PA 19320

Date: March 30, 2004

~~Names and address of Defendant's~~
~~signatories]~~ JAMES P. LISA, JR.

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: PAUL BONI, ESQUIRE

Title: ATTORNEY FOR PENGUIN INDUSTRIES, INC.

325 CHESTNUT STREET, SUITE 1109

Address: PHILADELPHIA, PA 19106

215/989-0034

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Dart Container Corporation of Pennsylvania, et al. (E.D. Pa.), relating to the Walsh Landfill (a/k/a Welsh Road and Barkman Landfill) Superfund Site in Honey Brook Township, Chester and Lancaster Counties, Pennsylvania:

FOR DEFENDANT REEVES BROTHERS, INC.
(SUCCESSOR IN INTEREST TO FENCHURCH,
INC.)

Date: 3/26/04

[Names and address of Defendant's
signatories]

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Thomas N. Griffin III, Esq.

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Three Wachovia Center
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Liquid Waste Report

Firm	Description of Liquid Waste	Source/Interview	Disposal Dates	Amount	Settle Sheet	Min	Max	Footnote
Alcoa	Liquid believed to be paint thinner; saw liquid drained at Site; other Barkman employees believed to have hauled Alcoa's waste	Anderson, David 4/5/91, 11/19/01	1979-83	8 - 10 cy box, 4xs		6,464	8,080	Min= 8cy x4 x 202 gal; Max= 10cy x 4 x 202 gal (1cy =202 gal)
Alcoa	Thick sludge like material "flamable & corrosive", Black liquid "flamable"	Hoffman, Joe/CS3 4/91, 11/91, 7/92	1976-78 (for 6mos. -1yr)	2x12yd boxes x every 3 wks	*1A&	16,000	34,000	Assume 12yd box = 2,000 gal; Min= 2 x 2000gal x 8 x .5, Max= 2 x 2000gal x 17 x .5; half went to Mountaintop
Alcoa	Liquids: "solvents, "chemicals", "liquid that burns"	Jackson, Michael 1/26/98	Late 70's -early 80's	Assume 1000-2000gal "sealed can" every 2 wks for 3-4yrs	* 01D	39,000	104,000	Settlement sheet; Min= 1000gal x 26 wks x 3yrs x .5, Max= 2000gal x 26 wks x 4yrs x .5 (1/2 went to Mountaintop)
Alcoa	Hauled mixed loads of drums of liquids from Alcoa to the Site.	Klemmer, Billy 11/1/96	3.5yrs	drums				No quantity information
Alcoa	Barkman hauled waste oil (2,000 gal) and solvents (1,330 gal); Barkman to transfer to Delaware Container	Payne, Barry 10/15/91& 10/16/91	1977-79	2000-gal dumpster; 1330-gal box		179,640	179,640	2000gal x 6 trips x 3yrs + 1330gal x 36 trips x 3yrs; See Meckley, Crivaro, JTrimble & Kommer; Alcoa 104(e) resp.
Alcoa	Sealed 55 gal drums (assume they contain liquids)	Turner, George 6/14/91, 6/12/97	1978-83 (6yrs)	5-10 x 55-gal drums every 2 wks	* 01E	21,450	42,900	Min= 5 x 55gal x 26 x 6 x .5; Max= 10 x 55gal x 26 x 6 x .5 (1/2 went to Mountaintop)
						<u>262,554</u>	<u>388,620</u>	
Dart Con	Waste hydraulic oil & styrofoam beads	Clevenstine, Walter 6/5/91	Late 1970s	8-10, 55-gallon drums/month (2% beads)		317	396	Oil strained to remove beads, beads buried at Site; Min= 8 x 55gal x 12 x 3yrs x 2%; Max= 10 x 55gal x 12 x 3yrs x 2%
Dart Con	Hydraulic oil and solvent	Klemmer, Billy 11/7/90 & 2/12/91	1984-85	3-4 drums, one time	* 03A	165	220	Min= 3 x 55gal; Max= 4 x 55gal

Liquid Waste Report

Firm	Description of Liquid Waste	Source/Interview	Disposal Dates	Amount	Settle Sheet	Min	Max	Footnote
Dart Con	Plastic beads strained from hydraulic oil	Murray, John Affidavit 4/99	Late 1970s	26.4 gallons		26	26	Max= 24 x 55gal drums x 2% (strained beads)
						<u>508</u>	<u>642</u>	
Penguin	Waste oils, water and aluminum tailings	PADER document	9/79	20, 55-gal drums	* 06A	1,100	1,100	Max= 20 x 55gal
						<u>1,100</u>	<u>1,100</u>	
Schick	Machine waste oil- in modified box/tank; clear, no odors/fumes	Clevenstine, Walter 6/5/91	Late 1970's	1,000 or 1,500-gal	* 08B	3,000	4,500	Observed liquids being drained at Site 3 times; Min= 3x1000 gal; Max= 3 x 1500 gal
Schick	Liquid waste 20, 55gal drums, caustic solvents; fumes sharp/caustic like paint thinner	Jackson, Billy CS1 6/8/90, 12/11/96	1975-77	18, 55-gal drums	* 06A	990	990	Max= 18 x 55gal
Schick	Cans and drums containing liquid, some clear or purple; smelled like paint thinner	Klemmer, Billy 11/90, 2/91	1975-77	35-gal cans & 55-gal drums		93,600	117,000	Min= 8 x 55gal x 52wk x 2.5yrs + 8 x 35gal x 52wk x 2.5yrs; Max= 10 x 55gal x 52wk x 2.5yrs + 10 x 35gal x 52wk x 2.5 yrs
						<u>97,580</u>	<u>122,490</u>	
Sperry N	Paint- red and yellow	Clevenstine, Walter 10/11/96	Early 70s	Hundreds of 55-gal drums	* 10F	5,500	8,250	Settlement sheet Min=200 drums,Max=300 drums; half went to Mountaintop
Sperry N	Degreaser contract; smelled like paint thinner; flammable & hazardous big name chemicals; paint cans & bad paint	Jackson, Billy CS1 6/8/90	1976-78	12-24, 5-gal cans x 2/wk x 3 yrs	* 10C	18,720	37,440	16. No recall on re-interview; Settlement sheet Min= 12 x 5gal x 2wk x 3yr, Max= 24 x 5 galx 2wk x 3yr)

Liquid Waste Report

Firm	Description of Liquid Waste	Source/Interview	Disposal Dates	Amount	Settle Sheet	Min	Max	Footnote
Sperry N	Paint in cans (2 - 3 inches each)	Jackson, Michael 1/26/98	1976-'80 (4 yrs)	16-20, 1 & 35-gal cans, once a month for 4 yrs	*10D	328	3,306	Assumes 4-5 drums/wk; Min= 16 x .4268gal (residue) x 12 mo x 4 yrs; Max= 20 x 3.4439gal (residue) x 12 mo x 4 yrs
Sperry N	Paint wash water	Kadtke, Edward 7/20/92, 11/20/96	Prior to '74 (6mo)	2000-gal, 5x/wk for 6 mos	*10E	260,000	260,000	Settlement Sheet; 2000gal x 5 x 26wks
Sperry N	Liquid waste and metal shavings; clear & blue liquids; paint	Klemmer, Billy 11/7/90	80-81, 84-85 (3yrs)	5 x 13-15, 55-gal drums/wk x 3 yrs	*10B	557,700	643,500	Min= 5 x 13 x 55gal x 52 x 3yrs; Max= 5 x 15 x 55gal x 52 x 3yrs
Sperry N	Various drain oils	Martin, John R. 7/20/92 & 2/19/97	1980	1000-gal 2-3 times	*10A	2,000	3,000	9. Settlement sheet; Martin hailed mainly to Mountaintop but dumped a couple times at Site; Min= 2 x 1000gal; Max= 3 x 1000gal
Sperry N	Paint waste, paint thinner	Miller, Joseph 8/23/97	Mid 1970s (2 yrs)	6 drums every 3 months	*10G	2,640	2,640	Settlement sheet (6 x 55gal x 4 x 2); Miller believes wastes disposed at Site
Sperry N	Degreaser & paint thinner	Miller, Joseph 8/23/97	Mid 1970s (2 yrs)	4-6 drums/month	*10G	5,280	7,920	Settlement sheet (Min= 4 x 55gal x 12 months x 2 yrs; Max= 6 x 55gal x 12 months x 2yrs
Sperry N	Liquid paints and thinners	Townsend, Paul 9/25/96	1970s	55-gal drums		6,600	9,900	2 or 3x roll-off (roll-off estimated to hold 60, 55-gal drums); Min= 2 x 60 x 55gal; Max= 3 x 60 x 55gal
						<u>858,768</u>	<u>975,956</u>	

Liquid Waste Report

Firm	Description of Liquid Waste	Source/Interview	Disposal Dates	Amount	Settle Sheet	Min	Max	Footnote
Sun Oil	Liquids	Klemmer, Billy '90, '91, '99, '02	1980-81/84-85(3yrs)	35 & 55 gallon drums	* 11A	573,300	3,088,800	(Roll-off = 35-40, 35- & 55-gal drums) Min= 1 x 35 x 35 gal x 3xs/wk x 3 yrs; Max= 3 x 40 x 55-gal x 3xs/wk x 3 yrs.
						<u>573,300</u>	<u>3,088,800</u>	
GRAND TOTALS						<u>1,793,820</u>	<u>4,557,608</u>	

Solid Waste Report

Firm	Description of Solid Waste	Source/Interview	Disposal Dates	SWAmount	Settl	SWMimin	SWMaximu	SW Footnote
Alcoa	Regular Trash	Turner, George 6/14/91, 6/12/97	1978-83 (6yrs)	40yd, 1-2x/wk x 6yrs	* 01E	12,480	24,960	Assume 40yd compactor; Min= 40yd x 1x/wk x 6yrs, Max= 40yd x 2x/wk x 6yrs
Alcoa	Trash	Payne Barry 10/15 & 10/16/91	1978/79	Compactor, 3 per mo.		2,880	2,880	Assume 40yd compactor, 3x/mo x 2yrs (same pickup schedule as for solvents)
Alcoa	Hauled regular trash, wood & paper	Townsend Paul 9/25/96	1977	40yd compactor		5,676	5,676	Based on Alcoa Solid Waste Survey of 1978
						<u>21,036</u>	<u>33,516</u>	
Dart Cdn	Styrofoam waste, plastic utensils to Site	Klemmer, Billy 11/7/90 & 2/12/91	1984-85	4x30cyx4-5/wkx2yr s	* 03A	49,920	62,400	Min= 4 x 30yd x 4x/wk x 2yrs; Max= 4 x 30yd x 5x/wk x 2yrs; assume 55-gallon drums
Dart Con	Plant trash (primarily reject plastic cups)	Murray, John Affidavit 4/99	1974-83	30-40yd comp; 1-2/dy		98,550	262,800	Pickups sometimes occurred 2x/day; Min= 30yd x daily x 9yrs; Max= 40yd x 2x/day x 9yrs
						<u>148,470</u>	<u>325,200</u>	
Penguin	Compactor with empty gun cleaning oil cans, and Hoppes Gun Cleaning Kits	Good James 4/25/91	6/1/78 - 10/31/83	40yd comp/monthly		2,600	2,600	According to Penguin ltr dtd 1/22/02: 40yd compactor x monthly x 65mos
						<u>2,600</u>	<u>2,600</u>	
Schick	Paper and general trash	Shick Invoice; Klemmer Intv. 90/91	1977-78	40 yd compactors		18,560	18,560	Barkman hauled 9,280 cy from Schick in 1977; Klemmer hauled from Schick for 2 yrs (est. '77-78); 9,280 cy x 2 yrs
						<u>18,560</u>	<u>18,560</u>	

Solid Waste Report

Firm	Description of Solid Waste	Source/Interview	Disposal Dates	SWAmount	Settl	SWMinim	SWMaximu	SW Footnote
Sperry N	Hauled equipment parts, motors, wood, cans & oil	Klemmer, Billy 11/7/90	80-81, 84-85 (3yrs)	3yd & 30yd dumpsters	* 10B	185,640	207,480	Min= 35 x 3yd + 5 x 30yd x 4x/wk x 3.5yrs, Max= 35 x 3yd + 6 x 30yd x 4x/wk x 3.5yrs
Sperry N	Cardboard, paper, skids and wood pallets; used for fuel at Site	Delhm William 8/20/91	1963/64 -1970	55gal dr (contents)		65,700	76,650	Assume truckload; Min= 30yd dumpster x 365days x 6yrs, Max= 30yd dumpster x 365days x 7yrs
Sperry N	Regular trash, paper & cardboard	Thompson Thomas 3/26/97, 6/4/91	1973	30-40yd x 5x/wk x 52		7,800	10,400	Rear-end loader; Estimated Min= 30yd x 5x/wk x 52wks, Max= 40yd x 5x/wk x 52wks
Sperry N	General trash, wood, and metal scrap	Good David 1/10/91	1980 -1983	55gal dr (contents)		1,287,000	1,287,000	50 x 55gal x 3x/wk x 3yrs; early 1980s, assume 1980-1983 (SCA took over Site in 1983)
						<u>1,548,140</u>	<u>1,581,530</u>	
Sun Oil	Floor sweepings and some type of unidentified shavings	Delhm William 8/20/91	Late 70s	3 x 2cy x twice/wk		1,248	1,872	Assume disposal at Site was for 2-3 years
						<u>1,248</u>	<u>1,872</u>	
GRAND TOTALS						<u>1,738,054</u>	<u>1,983,278</u>	

De Minimis Settlement

Volumetric Ranking Summary/Cost Allocation Report

(Descending)

PRP Name	Min. Liquid Waste Volume (gallons)	Max. Liquid Waste Volume (gallons)	Ave. Liquid Waste Volume (gallons)	Liquid Waste %	Liq. Waste Past Costs Share	Liquid Waste Future Cost Share and Premium	Min Solid Waste Volume (cub. yds.)	Max. Solid Waste Volume (cub. yds.)	Ave. Solid Waste (tons)	Solid Waste Cost	De Minimis Payment Amount
Dart Container Corporation	508	642	575	0.01811	\$555	\$1,220	148,470	325,200	11,842	\$62,781	\$64,536
Penguin Industries	1,100	1,100	1,100	0.03464	\$1,061	\$2,334	2,600	2,600	130	\$689	\$4,084
Reeves Brothers	97,590	122,490	110,040	3.46505	\$106,135	\$233,532	18,560	18,560	928	\$4,918	\$344,585
De Minimis Total			111,715								\$413,206
Site Total			3,175,714								

Welsh Road Superfund Site
Explanation Sheet for *De Minimis* Settlement - Volumetric Ranking Summary

The following provides an explanation of the information provided in the attached Welsh Road Superfund Site (the Site) *De Minimis* Settlement Volumetric Ranking Summary (VRS).

PRP Name = The name of the specific potentially responsible party (PRP).

Min. Liquid Waste Volume = The lowest possible volume of a PRP's liquid waste into the Site, in gallons, based on available information.

Max. Liquid Waste Volume = The highest possible volume of a PRP's liquid waste into the Site, in gallons, based on available information.

Ave. Liquid Waste Volume = The average volume of a PRP's liquid waste into the Site, in gallons, based on available information. Calculated by adding the Min. and Max. Liquid Waste Volume and dividing the total by 2.

Liquid Waste % = The Ave. Liquid Waste Volume of a PRP, divided by the total Ave. Volume of Liquid Waste into the Site, multiplied by 100.

Liquid Waste Past Cost Share = The Liquid Waste %, divided by 100, and multiplied by \$3,063,012, the total past costs at the Site.

Liquid Waste Future Cost Share and Premium = The Liquid Waste %, divided by 100, multiplied by \$2,695,857, the total future costs at the Site, multiplied by 2.5 (150% premium).

Min. Solid Waste Volume (cub. yds) = The lowest possible volume of a PRP's solid waste into the Site, in cubic yards, based on available information.

Max. Solid Waste Volume (cub. yds) = The highest possible volume of a PRP's solid waste into the Site, in cubic yards, based on available information.

Ave. Solid Waste (tons) = The average volume of a PRP's solid waste into the Site, calculated by adding the Min. and Max. Solid Waste Volume (cub. yds) and dividing by 2. The average volume in cubic yards was converted to tons by multiplying the cubic yards by 100, the number of pounds per cubic yard of solid waste, and dividing the product by 2,000, the number of pounds in a ton.

Solid Waste Cost = The Ave. Solid Waste (tons) multiplied by \$5.30, the price per ton of municipal solid waste, as recommended in the EPA Policy for Municipality and Municipal Solid Waste CERCLA Settlements at NPL Co-Disposal Sites, dated February 5, 1998.

De Minimis Payment Amount = The sum of the Liquid Waste Past Cost Share, the Liquid Waste Future Cost Share and Premium, and the Solid Waste Cost.

